

REMARKS

Reconsideration is respectfully requested.

Entry of the above amendments is courteously requested in order to place all claims in this application in allowable condition and/or to place the non-allowed claims in better condition for consideration on appeal.

Claims 1 through 12 and 16 through 23 remain in this application. Claims 13 through 15 have been cancelled. No claims have been withdrawn or added.

The Examiner's rejections will be considered in the order of their occurrence in the Office Action.

Paragraph 2 of the Office Action

The Declaration under 37 CFR 1.131 with Exhibits A through G, submitted by the Applicant, has been objected to by the Examiner because the pertinent dates on the exhibits which revolve around the priority date in question have been deleted

It is noted that the §131 Declaration that was filed with the previous response included Exhibits A through G. The dates on Exhibits A through E (and one date but not both dates in Exhibit F) which are prior to the Blair provisional patent application (60/482,632) filing date of June 26, 2003 have been removed, while the dates on documents (e.g., Exhibit F) that were after the filing date of the Blair '632 provisional patent application have not been removed.

However, in that declaration, the undersigned declared under penalty of perjury that "[a]ll dates deleted from the above Exhibits are prior to June 26, 2003". The dates that bear upon the determination of diligence are shown in the Exhibits, and the specific dates in the Exhibits that precede the filing date of the '632 Blair provisional patent application are not

significant to establishing conception or reduction to practice, as long as the date of these documents precede the Blair '632 filing date, which the undersigned has sworn to the affidavit. Applicant only needs to establish priority before the filing date of the Blair '632 provisional application, not when before the filing date the applicant conceived the claimed invention. Only the specific dates of documents after the Blair '632 provisional filing date are significant to the matter at issue here, and it is again noted that the Blair '632 filing date is June 26, 2003, and the filing date of the present nonprovisional patent application is July 18, 2003, which is merely about 20 days later than the Blair '632 filing date.

Moreover, the undersigned has submitted 10 to 20 of such §131 Declarations in the past 15 years that similarly had the dates deleted from Exhibits that preceded the filing date of the pertinent reference, and has never received an objection to the fact that the dates were deleted, and it is believed that this is common practice for §131 Declarations. The Examiner might want to consult with an SPE as to the acceptability of this practice.

It is not clear from the objection in the Office Action if the Examiner is disputing the sworn statement of the undersigned that the deleted dates precede the Blair '623 filing date, or if there is some confusion as to the importance of the dates that precede the filing date of the provisional patent being antedated by the §131 Declaration.

In any event, in order to move prosecution along and remove insignificant issues, the undersigned has resubmitted herewith a new §131 Declaration with Exhibits in which the dates are not deleted.

Accordingly, it is submitted that the facts set forth in the enclosed §131 Declaration remove the Blair patent application publication as a proper reference against the present patent application.

Paragraph 3 of the Office Action

Claims 1 through 12 and 16 through 23 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Blair.

The undersigned sought to point the significant disparity between the text in the disclosure of the Blair published patent application and the Blair '632 provisional patent application. As the Examiner clearly recognizes, it is not prohibited to add further disclosure in a nonprovisional patent application (or in this case, a PCT application) that is filed to take advantage (to the extent possible) of the filing date of the a provisional patent application. In fact, it is quite common and appears to have occurred in the case of the Blair patent application, as evidenced by the significant increase in the descriptive text and the number of drawings from the provisional patent application to the PCT application. Clearly, this is not a case of the disclosure of the provisional patent application merely being refiled as a nonprovisional patent application. Again, as it is the date of the Blair '632 provisional; patent application that is being relied upon, and not the date of the PCT or subsequent applications, it is the disclosure of the '632 provisional patent application that is relevant. It is submitted that fairness and the goal of a compact prosecution dictates that the applicant is entitled to be informed of what elements of the provisional patent application are being alleged to disclose the elements of the applicant's claims, so that a fair and compact prosecution may be accomplished.

In any event, it is submitted that the §131 Declaration has removed the Blair applications as references that may be used against the claims of the present patent application, so it is submitted that the rejection should be withdrawn.

Withdrawal of the §103(a) rejection of claims 1 through 12 and 16 through 23 is therefore respectfully requested.


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Amendment dated March 25, 2008
Reply to Office Action mailed January 30, 2008

CONCLUSION

In light of the foregoing amendments and remarks, early reconsideration and allowance of this application are most courteously solicited.

Respectfully submitted,

WOODS, FULLER, SHULTZ & SMITH P.C.



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